IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
NO. 1:19-cv-00639-RB-JFR

DENNIS MURPHY, as Personal Representative of the ESTATE OF DANIEL TURNER, deceased, and WALTER and TAMARA TURNER,

Plaintiffs,

vs.

THE CITY OF FARMINGTON, et al.,

Defendants.

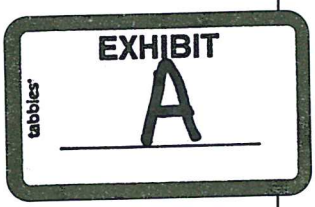
DEPOSITION OF JOHN STEIN, M.D.

BY ZOOM VIDEO

Tuesday, September 15th, 2020
9:00 a.m.
WIGGINS, WILLIAMS & WIGGINS, P.C.
1803 Rio Grande Boulevard, Northwest
Albuquerque, New Mexico 87104

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, this deposition was:

TAKEN BY: MS. PATRICIA G. WILLIAMS
ATTORNEY FOR DEFENDANTS



REPORTED BY: MICHELE M. TRUJILLO
NEW MEXICO CCR No. 226
CUMBRE COURT REPORTING, INC.
2019 Galisteo Street, Suite A-1
Santa Fe, New Mexico 87505

APPEARANCES

For the Plaintiffs:
MR. NICHOLAS T. DAVIS (via Zoom)
DAVIS LAW NEW MEXICO
1000 Lomas Boulevard, Northwest
Albuquerque, New Mexico 87102
(505) 242-1904
nick@davislawnm.com

For the Defendants:

MS. PATRICIA G. WILLIAMS (via Zoom)
WIGGINS, WILLIAMS & WIGGINS, P.C.
1803 Rio Grande Boulevard, Northwest
Albuquerque, New Mexico 87104
(505) 764-8400
pwilliams@wwwlaw.us

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(No exhibits marked)

MS. WILLIAMS: Nick, do you agree that this deposition can be taken remotely and that the court reporter doesn't need to be in the room with Dr. Stein?

MR. NICK DAVIS: I do.

MS. WILLIAMS: Okay. Dr. Stein, I'm Patti Williams. I represent the City of Farmington in this lawsuit. So I have a lot of questions for you today, and Michele will swear you in.

THE WITNESS: Good morning.

MS. WILLIAMS: Good morning.

JOHN STEIN, M.D.,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. WILLIAMS:

Q. Dr. Stein, how many times have you been deposed?

A. Approximately 20.

Q. Okay. I'm not going to go over the rules, then, because we have limited time today, and we have a lot of ground to cover. But Michele is writing everything down, and so we just need to get a good record and be aware that that's what we're trying to do today.

I've reviewed your resume, and I wanted to know how you would describe the focus of your research activities.

A. Generally, they involve technology implementation in the emergency care environment.

Q. I notice that you have several presentations on ultrasound and ectopic pregnancy. Is that a particular interest of yours?

A. Yes.

Q. I also noticed, looking at your list -- and sometimes the names don't help us laypeople very much, but do you have any publications on cardiac arrest?

A. I don't believe so. I did work with some cardiologists on a number of studies, but that wasn't really the focus.

Q. Okay. Do you have -- I saw that you had an albuterol study or two. Do you have other studies on breathing and ventilation?

A. No. Those would definitely be the highlights.

Q. Do you have any publications or have you done any research on in-custody deaths?

A. No.

Q. Have you done any research on acidosis?

A. Not as a -- I'm sure something pertains to acidosis, but nothing specifically on acidosis, that I can recall.

Q. Have you done an evaluation of weight force impacts on ventilations?

A. No.

Q. Okay. Those are the periods that -- those are the topics that I was looking at. Have you done any continuing medical education in those topics?

A. Well, acidosis is a topic that is virtually ubiquitous within medicine. So I would have to say that, yes, many topics have arisen regarding acidosis. I wouldn't say that I've had a specific CME on any of those other fairly narrow topics.

Q. Have you done research in any of those topics, not just publications but research that was unpublished?

A. No.

Q. Okay. Thanks.

Your research has been focused on ER populations, correct?

A. Yes.

Q. Is that a different population than a population in the field, if you know what I mean by that, that law enforcement or EMTs or paramedics

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would come across, outside of the hospital context?
A. I'm not sure I completely understand, but every EMS patient becomes my patient.
Q. But have you done the encounters outside of the hospital setting? What's your experience outside of the hospital setting with those patients?
A. Yeah, I was also an EMT.
Q. For how long?
A. Two to three years. I can't quite recall. It was at the end of college.
Q. And where was that?
A. That was in Upstate New York.
Q. Were you on a rescue unit?
A. Yes.
Q. Did you have experience working in conjunction with law enforcement officers in that role?
A. Yes. Law enforcement is a regular part of emergency care.
Q. So have you ever worked in law enforcement?
A. No.
Q. And have you had any training in law enforcement?
A. No.
Q. Have you ever worked with training law

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enforcement officers on first responder care?
A. No.
Q. What's your understanding of the relationship between law enforcement and EMT paramedics at a scene?
A. They are responsible for the police work, and the EMS is responsible for the medical work.
Q. So your training indicates that the police officers are not medically trained professionals, correct?
MR. NICK DAVIS: Form and foundation.
A. I can't say with certainty, but it's my experience that, typically, they require basic life-saving skills, such as CPR certifications, et cetera.
Q. Have you ever trained law enforcement officers on CPR?
A. I may have. I don't know. I did some CPR training for a while in medical school, and maybe there were some police officers there. I don't know for sure.
Q. So a law enforcement officer could have been in a class you offered, but have you ever been retained by a department to train a class of law enforcement officers as part of their continuing

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education?
A. No.
Q. Have you ever trained law enforcement officers in positional asphyxiation?
A. No.
Q. Have you ever trained law enforcement officers in the recovery position?
A. No.
Q. What's your experience with safety protocols for people on a scene like Daniel Turner, whom I'm going to describe as an agitated methamphetamine user during the course of this deposition? Is that a fair description of his state?
MR. NICK DAVIS: Form.
A. Yes.
Q. What's your experience in the safety protocols for people like that during an EMT call?
MR. NICK DAVIS: Object to the form.
A. If you are asking if I have formed any protocols, I have not been involved in forming any protocols.
Q. I understand that, but what's your experience as an EMT? Is it your understanding that the EMTs need to subdue and make the scene safe, or is that the law enforcement officers' duty?

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MR. NICK DAVIS: Object to form.
A. It's the law enforcement --
THE WITNESS: Sorry about that.
A. I would say, typically, that's the law enforcement territory.
Q. What obligations does the law enforcement agency have for scene safety in a first responder call?
MR. NICK DAVIS: Object to the form, foundation.
A. I don't know that I have any awareness of any specifics of their responsibility.
Q. Okay.
A. From a medical provider's perspective, we are relying on the police to assess the safety and to provide ongoing safety for the medical response.
Q. Does that sometimes include the use of restraint?
A. Yes.
Q. How many times have you testified in court, Doctor?
A. I believe, three times.
Q. In each of those cases, were you an expert in the standard of care, or were you qualified as an expert in another area?

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A. I believe I was typically the standard-of-care expert.
Q. Did those cases involve an incident in a hospital or an incident in the field?
A. Certainly, most of them are in the hospital. Let me just think if there was -- a couple of them have been in jail populations. I don't think I've testified in court about a jail case, but I've done some depositions in that territory.
Q. But your courtroom testimony has focused on standard of care in the hospital setting?
A. I believe so.
Q. Have you developed an opinion in any of the cases you've been retained in on EMTs' standard of care?
A. Not that I recall.
Q. Have you ever developed opinions in a case that you've been retained to work on on law enforcement officers' standard of care?
A. No, certainly not.
Q. Is it your opinion that law enforcement officers are bound by a medical provider's standard of care or not?
A. Not that I'm aware of.
Q. In what states were you testifying as an

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expert in court, Doctor?
A. In court, one was California, one was Washington, and one was Virginia.
Q. When was the last time you were qualified as an expert in court?
A. I believe my estimate would be 2019.
Q. Have you ever been qualified by a court to testify against law enforcement officers' conduct or actions before?
A. I don't believe so.
Q. Do you know Dr. Bilke?
A. No.
Q. Bilke. I'm sorry. It's Bilke. You don't?
A. No, I don't.
Q. Have you been on opposite sides of cases before?
A. Not that I'm aware of.
Q. Have you read his research or publications?
A. Yes, some of them.
Q. What's your opinion of his work?
A. In what regard?
Q. The quality of his work compared against others in your field of emergency medicine.
A. So, if we are speaking broadly about his research background, he seems to be a leader in the

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field of emergency medicine, and I have no objections with the quality of his research, broadly.
Q. Before you were retained in this lawsuit, were you familiar with any of his work?
A. Not that I'm aware of.
Q. Okay. I'm trying to hurry so that we can get our time in, and Nick knows that's hard for me.
A. Okay.
MR. NICK DAVIS: I would agree that you're thorough, Patti.
MS. WILLIAMS: Thorough, there you go.
Q. How did you become acquainted with the Davis law firm, Doctor? How did you make contact with them or they make contact with you?
A. I am not aware. They called me. I'm not sure how they got my name.
Q. When did they first come in contact with you? Do you have the date in your notes?
A. I know that the first time that we spoke was in April. So I would imagine that that was roughly the time that they -- that we were in contact.
Q. What were you retained to do?
A. I was retained to review a number of files and videos and conversations, I guess, interrogations

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that pertained to Mr. Turner, and to come to an assessment about what were the medical situations that pertained to his care.
Q. Did you get an engagement letter or email or something that described the scope of work?
A. Not that I recall.
Q. Have you ever reviewed cases for the Davis law firm before?
A. I know that we discussed one other case by phone on one occasion.
Q. What year was that, Doctor?
A. If I'm not mistaken, this was after April.
Q. So your memory is that this was the first case that you've been retained by that firm to opine in?
A. I believe so.
Q. What did you ask to review in order to prepare your opinions in this case?
A. Well, after we talked on the phone and I understood a little bit of the scope of work, the law firm provided me with an extensive set of files to review.
Q. Did you select the information, or was it information that they thought would be helpful to you? Who initiated the first set of document

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exchange?
A. They provided the documents, and they seemed rather exhaustive. So I felt that I had all of the documents that I needed to review.
Q. So, to date, there's nothing that you wished that you had access to that you didn't have access to in this case in order to make your opinions?
MR. NICK DAVIS: Object to the form.
A. Not that I'm aware of.
Q. And you're not waiting to review anything else, correct?
A. No. In my experience, things do evolve over time. So perhaps there will be something else to review, such as other depositions, but at this point in time, I don't -- I'm not aware of anything else that I would need to make my judgments.
Q. Okay. Thanks.
Have you made plans to attend the trial in this case in April of next year?
A. Yes.
MR. NICK DAVIS: Correction. March.
MS. WILLIAMS: You are right. March. It's like when Trump said vote on November 28th.
Q. Sorry. That's not what I was trying to do,

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Doctor. I'm not that tricky.
Are you working on any other cases in New Mexico, currently?
A. I'm sure that I am.
Q. Can you call them out for me?
A. No, not without some kind of search of my computer.
Q. How many active cases do you have at a time, Doctor, in which you're offering expert testimony?
A. You know, to be honest, it's always a little hard for me to tell which ones are active, because I just wait for the attorneys to call me and request help. I would estimate that I often have somewhere between five and ten cases that are, quote-unquote, "active."
Q. Do you recall any in New Mexico, currently?
A. I definitely work with other attorneys in New Mexico.
Q. In Albuquerque or in other cities?
A. I would believe that most of them are in Albuquerque.
Q. Do you keep a list of cases that you're currently working on?
A. Not that I'm currently working on.

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Q. Are all of your active cases cases that involve claims of medical malpractice?
A. That certainly is the majority.
Q. Can you tell me the names of one or two cases in which the issue was not medical malpractice in which you offered opinions?
A. I'd have to take a look at my files, here.
Q. I'm okay if you take that time.
A. Okay.
Okay. Generally speaking, reviewing my list of deposition testimony, they seem to mostly fall into that category. I'm not sure if I have any that don't.
Q. And you're not finding any outliers, looking at your list? I know it's a quick review, but --
A. No, not -- no, I don't believe so.
Q. If you think of one during this deposition that did not just involve claims of medical malpractice, will you let me know?
A. Okay.
Q. Because this will probably be the only time we will have a chance to talk.
A. Sure.
Q. I understand that you rate cases during

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your review on a one-to-ten scale. Is that the case?
A. Sometimes.
Q. Did you rate this case on a one-to-ten?
A. Not that I recall.
Q. If you were rating it today, how would you rate this case on your one-to-ten scale? And I understand that one is the best -- the worst-case scenario for the plaintiff, and 10 is the best-case scenario for the plaintiff, right? Or is that opposite?
A. These discussions are always a little bit different from attorney to attorney, but I would rate this as a highly favorable case from the plaintiff's perspective.
Q. And why do you make that rating?
A. Because the medical facts in the case seem fairly straightforward to me.
Q. What are the plaintiff's strengths in this case, from the medical perspective --
MR. NICK DAVIS: Form and foundation.
Q. -- on which you've been retained to opine?
A. So I would say that the medical facts in this case that are strong for the plaintiff are that we had a patient who was very typical for emergency medical practice and in no way, shape, or form

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levels, sometimes even faster. But, you know, 10 minutes is kind of a reasonable time check, sometimes. So one can fix that fairly quickly. Sometimes it takes much longer, though.
Q. Is there any data -- and I don't know if this is in the Hicks article or not -- that shows the pH values of an agitated meth user in the field, where they should be?
A. Yes. That Hicks article does reference five cases where they did measure the pH levels.
Q. In the field?
A. In the field or shortly after arrival to the Emergency Department.
Q. Were they above 7.4?
A. No. They were well below.
Q. Were they below seven?
A. Yes. All of them were below seven, I believe.
Q. Is there a way in the field to determine what a blood gas pH level is?
A. As I said, this is not difficult to guess, what the pH level would be, but one cannot obtain the actual value without measuring the blood.
Q. Is an EMT rig set up to allow blood gas tests?

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A. No.
MR. NICK DAVIS: Foundation.
A. They only have an indirect, where they can measure the end-tidal CO2.
Q. And there's a correlation between the CO2 and the pH?
A. Do you hear somebody else on the --
Q. I do. It's not in our top set here, but --
A. Is there a correlation? There's not a great correlation, unfortunately. There are some instances where it can be highly effective. This is not one of those situations.
Q. Is there any data showing, and I think you just answered this question, what the CO2 value should be in a meth user who is agitated in the field?
A. I guess I would say my answer for that is that I don't have a good answer for you there, because the values are always in response to the pH, and so it's the pH that's important. The compensation happens, but because of different levels and different metabolic circumstances, a different level of carbon dioxide can achieve kind of a widely different range of pH levels.
Q. Is there any way for a law enforcement officer or other first responder to determine a pH

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level in the field?
A. Not if you want to actually have the number.
Q. Is there any way for the first responder, including a law enforcement officer, to check the CO2 value, which I know, you said, is not a great correlation? But there could be some information gathered in the field?
A. In the field, you can use the end-tidal carbon dioxide monitor.
Q. But I think you've indicated that that doesn't necessarily give you a good correlation in this situation?
A. I don't think it's going to correlate well with the pH. That would be a hard interpretation to make.
Q. Okay. Let's talk a little bit about the incident in the Durango Joe's parking lot in Farmington, New Mexico. That incident was before there was any opportunity to triage, medically triage, Daniel Turner, correct?
A. Yes.
MR. NICK DAVIS: Object to the form.
Q. And that incident occurred before any medical history was taken by any medical

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professional, correct?
A. By a medical professional, yes.
Q. And it was before any medical screening exams could be taken, correct?
A. I believe the officer tried to do what I would say was a medical screening exam.
Q. Do you know what his training in medical screening exams would have been?
A. No, but he tried to obtain some medical data, and so that seems to be a medical screening exam, from my perspective.
Q. By asking Daniel -- what questions do you consider to be medical screening?
A. Oh, I just remember him asking the family, you know, "What happened?" and, "Is he on any drugs?" and, "Are there health problems?" That kind of thing.
Q. In your opinion, is it reasonable for law enforcement first responders to wait, to defer to EMTs or paramedics who are en route to the scene, when possible?
MR. NICK DAVIS: Object to the form.
A. Like I said, I'm not really much of an expert on police activities or procedures, but that's -- it seems like a reasonable statement that

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they would wait for the medical team to arrive, if that's possible.
Q. Do you agree that the scene in the Durango Joe's parking lot was a rapidly changing situation?
A. When compared to what?
Q. When compared to normal, everyday life.
A. Yes.
Q. And it's your opinion that the scene changed so rapidly that, within minutes, Daniel Turner went from being perfectly healthy to dead, right?
MR. NICK DAVIS: Object to the form.
A. Yeah, I never said he was perfectly healthy, but, yes, the person --
Q. Okay. I don't mean to put words in your mouth. How would you describe the situation before his death, in the minutes before his death, after the officer first encountered him through the time that he expired?
A. So, as I mentioned, he's a patient with altered mental status who was agitated.
Q. Do you consider that, when someone has encountered a law enforcement officer, they're a patient?

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A. I really don't know how law enforcement views that.
Q. Okay. Because you keep referring to him as a patient, and I don't know that the law enforcement -- you don't consider him to be a patient of the law enforcement officers, do you?
A. Like I said, I don't really know how law enforcement views this, but, to me, they're all patients.
Q. And that's because of your training as a medical professional, correct?
A. Yes.
Q. Is there a way to determine a methamphetamine level in a person presenting like Daniel Turner in the field?
A. No.
Q. Is it your understanding that the law enforcement officers did not have the ability to administer benzodiazepines to Daniel Turner?
A. I can't imagine that they could have.
Q. Does the EMT or paramedic crew have the ability to administer those medications?
MR. NICK DAVIS: Foundation.
A. Oftentimes, yes.
Q. What's your understanding of a law

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enforcement officer's medical training to make an assessment as to whether a person is near death or not?
A. I would say I don't know what the law enforcement training is in that regard.
Q. You agree that the law enforcement officers are laypeople in the medical field, right?
MR. NICK DAVIS: Object to foundation.
A. Generally, I think that's correct. I mean, they obviously receive more training than most regular laypeople.
Q. But they aren't medical providers, in your opinion, as an emergency room physician, are they?
A. I wouldn't consider them a medical provider, only of basic first aid.
Q. And high school students can get that in a class in school, right?
MR. NICK DAVIS: Foundation.
A. I believe so.
Q. Law enforcement officers have no ability in this case that we're talking about to start treatment for an agitated person in an altered mental state, correct?
MR. NICK DAVIS: Foundation.
A. I guess that depends on what you'd define

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as "treatment."
Q. Well, I don't really have a definition. I'm going back to your definition of the treatment that you described in your emergency room setting, which is restrain and medicate. If I misunderstood that, please let me know.
A. As well as communicate. So that's always our first attempt, to communicate and try to calm down verbally.
Q. And even with your attempts to communicate in the emergency room setting, you still find yourself needing to medicate and restrain once a week or so, correct?
A. Yes.
Q. So communication might be the first line of defense, but it's not the line of defense that you stop at, right?
A. I agree.
Q. I know that, for some drugs, you can have a counteracting drug for an overdose. Is there such a thing for methamphetamine?
A. Not for methamphetamine, no.
Q. So there's no drug that you could give them in an emergency room setting or you could give them in the field that would counteract the effects of the